

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD SULLIVAN,

Defendant-Appellant.

UNPUBLISHED
October 29, 1999

No. 206962
Recorder's Court
LC No. 93-013353

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

Defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), pursuant to a plea and sentence agreement. In accordance with the sentence agreement, the court sentenced defendant to twenty-two to fifty years' imprisonment for the second-degree murder conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right, and we affirm.

Most of defendant's issues on appeal involve challenges to various pretrial rulings and proceedings. Where, as here, a defendant unconditionally pleads guilty, only those issues that would preclude the state from obtaining a valid conviction against a defendant may be raised on appeal. *People v Lannom*, 441 Mich 490, 493; 490 NW2d 396 (1992). Such issues must go beyond the factual determination of the defendant's guilt; they must implicate the very authority of the state to try the defendant. *Id.* Where a specific issue relates to the capacity of the state to prove the defendant's factual guilt, that issue is subsumed by the defendant's guilty plea. *Id.*

Here, defendant's various issues do not involve jurisdictional or similar defects that would preclude the state from obtaining a valid conviction. Thus, by unconditionally pleading guilty, appellate review of the issues raised here is waived. *Lannom, supra*; *People v New*, 427 Mich 482, 494; 398 NW2d 358 (1986); *People v Bordash*, 208 Mich App 1, 3-4; 527 NW2d 17 (1994); *People v Vonins*, 203 Mich App 173, 175-176; 511 NW2d 706 (1993).

We reject defendant's claim that appellate review is appropriate under *People v Sundling*, 153 Mich App 277, 282-283; 395 NW2d 308 (1986). In *Sundling*, at the time the defendant entered his

guilty plea, the trial court made certain misstatements regarding the law. This gave the defendant the impression that he would be permitted to raise certain issues on appeal that otherwise would be waived by a guilty plea. Here, because the record fails to disclose any statements by the trial court that were calculated to lead defendant into mistakenly believing that he would be permitted to raise certain issues on appeal notwithstanding his guilty plea, *Sundling* is inapplicable.

The only issue that has not been waived for appeal is did the trial court err when it ordered defendant to pay restitution to the victim's family when restitution was not specifically addressed as part of the plea and sentencing agreement. Defendant urges this Court to follow the decision in *People v Schluter*, 204 Mich App 60, 63-66; 514 NW2d 489 (1994), rather than *People v Ronowski*, 222 Mich App 58, 59-61; 564 NW2d 466 (1997), because, at the time this offense was committed, the amended version of MCL 780.766(2); MSA 28.1287(766)(2), which served as the basis for the decision in *Ronowski*, had not yet been enacted. Defendant argues unpersuasively that applying MCL 780.766(2); SA 28.1287(766)(2), as amended, to his case as occurred in *Ronowski*, violates the Ex-Post Facto Clause of our state constitution, Const 1963, art 1, § 10.

The application of the amended statute did not disadvantage defendant. *People v Slocum*, 213 Mich App 239, 243; 539 NW2d 572 (1995). The amendment of MCL 780.766(2); MSA 28.1287(766)(2) simply made restitution mandatory rather than discretionary. Because restitution was a permissible form of punishment under both versions of the statute, we are not persuaded that the amendment amounted to an increase in punishment. *Slocum, supra*. When defendant committed this offense, he was on notice that restitution was a permissible sentencing option. Thus, defendant has not shown that application of MCL 780.766(2); MSA 28.1287(766)(2), as amended, violates the Ex-Post Facto Clause. Accordingly, consistent with the decision in *Ronowski*, we conclude that the trial court properly ordered defendant to pay restitution.

Affirmed.

/s/ Henry William Saad
/s/ Hilda R. Gage

I concur in result only.

/s/ Kathleen Jansen